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RECORD, CASE NO. 14099.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No. 391.

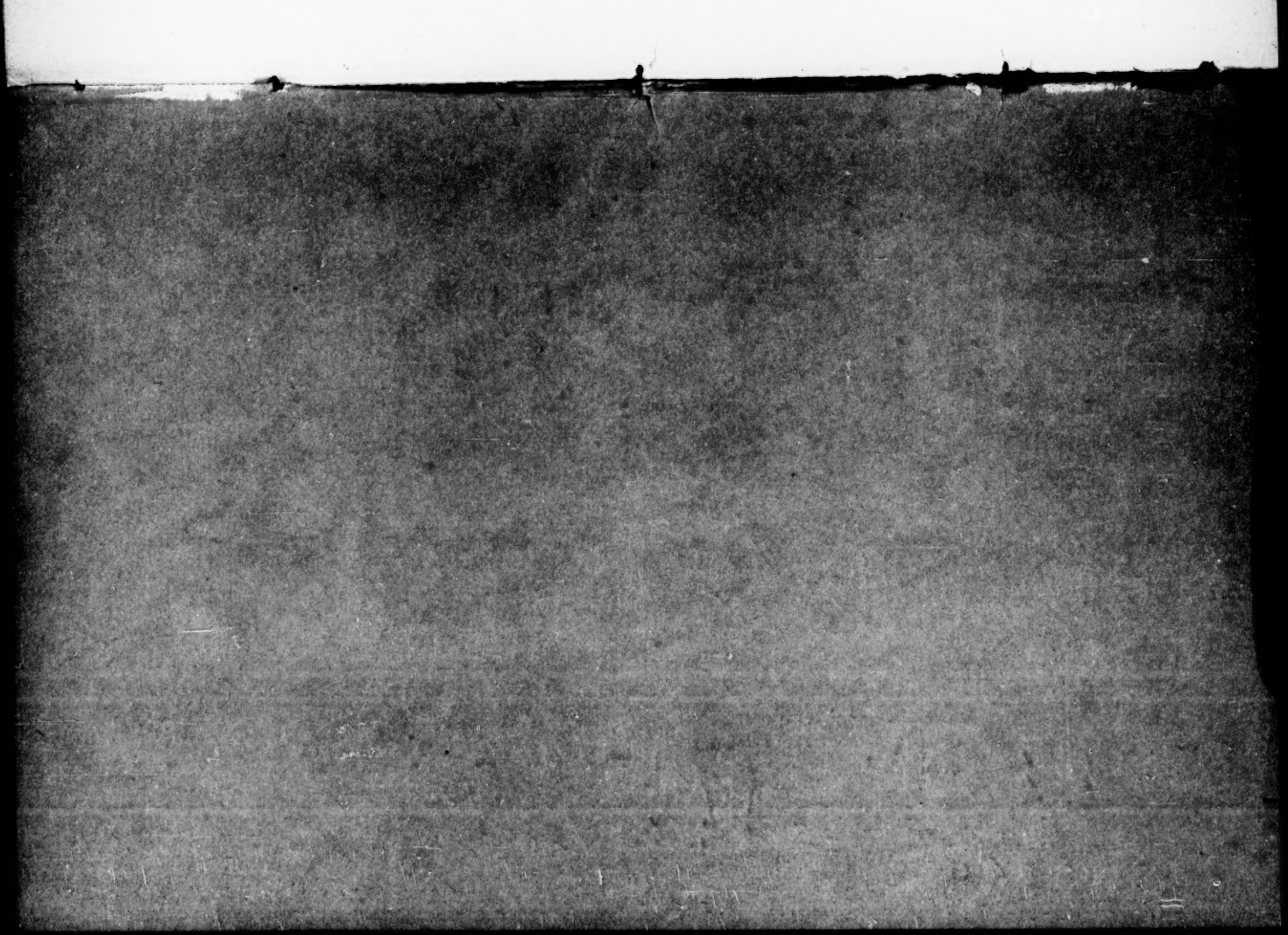
THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

HERMANN ISAACS.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED AUGUST 7, 1890.



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a UNITED STATES OF AMERICA.

Circuit court of the United States, eastern district of Louisiana.

UNITED STATES, PLAINTIFFS IN ERROR,
vs.
HERMAN ISAACS, DEFENDANT IN ERROR. } No. 11857.

William Grant, esquire, U. S. district attorney for plaintiffs in error; J. R. Beckwick, esquire, for defendant in error.

Writ of error returnable to the Supreme Court of the United States of America, at the city of Washington, D. C., on the second Monday of October, A. D. 1890.

Transcript of record.

1 Circuit court of the United States, eastern district of Louisiana.

UNITED STATES
vs.
HERMANN ISAACS. } No. 12408.

Petition, filed June 15, 1886.—*Proceedings in U. S. district court.*

To the hon. the district court of the United States for the eastern district of Louisiana:

The petition of the United States with respect show that Herman Isaacs, of the city of New Orleans, is indebted to the United States in the sum of ten hundred and seventy-three dollars and five cents, for this: that on the 2d June, 1885, the said Herman Isaacs imported and brought into the United States, to wit, into the port and city of New Orleans, per steamship "Paris," from a foreign place, to wit, from Antwerp, sixteen cases of soker's articles, viz, sixteen cases of cigarette paper, which on importation aforesaid were then and there subject by the laws of the United States to payment of seventy per cent ad valorem duties; that said goods were entered at the custom-house at said city of New Orleans at a valuation of $1,951, and the duties aforesaid thereon amounted to $1,365.70,

2 and on account thereof said importer paid $292.65, leaving a balance of ten hundred and seventy-three $\frac{05}{100}$ dollars due your petitioners, due notice whereof has been given and payment refused.

Wherefore petitioners pray that the said Herman Isaacs be cited, and after due proceedings had that he be condemned to pay petitioners in coin by law receivable for duties the said sum of ten hundred and seventy-three $\frac{05}{100}$ dollars, with interest thereon at the rate of five per cent per annum from 2 June, 1885, until paid, and costs of suit. And petitioners pray for general relief.

(Signed) J. W. GURLEY,
Asst. U. S. Att'y.

Citation issued 15 *June*, 1886.

United States of America, eastern district of Louisiana.

UNITED STATES *vs.* HERMANN ISAACS. } Circuit court of the United States, eastern district of Louisiana. No. 12408.

The President of the United States of America to Hermann Isaacs:

You are hereby summoned to comply with the demand contained in the petition, of which a copy accompanies this citation, or to deliver
3 your answer to the same in the office of the clerk of the district court of the United States for the eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, which delay is increased one day for every ten miles your place of residence is distant from New Orleans, the place where the court is held.

Witness the honorable Edward C. Billings, judge of the said court, at the city of New Orleans, this 15 day of June, A. D. one thousand eight hundred and eighty-six, and of the Independence of the United States of America the 110 year.

[SEAL.] (Signed.) K. LOEW,
Dy. Clerk.

Marshal's return.

Received Jun. 17, 1886, by the U. S. marshal, and on the 17 day of June, 1886, I served a true copy of the within citation and accompanying copy of petition on Herman Isaacs by handing the same to him in person in the city of New Orleans.

(Signed.) R. B. PLEASANTS,
U. S. Marshal.
JNO. BAKER,
Deputy U. S. Mar.

Answer filed Nov. 10, '86.

THE UNITED STATES *vs.* HERMANN ISAACS. } No. 12408.

4 And now comes the said defendant and for answer to the plaintiff's petition herein says: that he denies all and singular all of the allegations in said petition contained and denies that he is in any manner indebted to the plaintiff, and prays that there be judgment against the demand of the said plaintiff.

(Signed) J. R. BECKWITH,
Atty. for Deft.

Proceedings in U. S. circuit court.—Order.—Case transferred.

[Extract from the minute book, November Term, 1889.]

NEW ORLEANS, *Thursday, December* 19, 1889.

Court met pursuant to adjournment:
Present, Hon. Edward C. Billings, district judge.

UNITED STATES
vs.
HERMANN ISAACS. } No. 11857.

In this cause, commenced June 15, 1886, in the district court of the United States for the eastern district of Louisiana, being No. 12408 of the docket of said court, the case coming on to be heard on the pleadings filed in said court, the parties in the cause, through their attorneys
5 of record, suggested that said cause be transferred to the circuit court of the United States for the eastern district of Louisiana, and thereupon the court so ordered, and the said cause was transferred accordingly; and the attorneys for the respective parties, plaintiff and defendant, appeared in this court on this day, and in open court consented that the pleadings filed in the district court should be adopted in this court and that the cause should proceed as if the same had been commenced and had always proceeded in this court.

Empanneling of jury, hearing, and continuance.

[Extract from the minute book, November Term, 1889.]

NEW ORLEANS, *December* 19, 1889.

UNITED STATES
vs.
HERMANN ISAACS. } No. 11857.

This cause was called for trial.
Present, Wm. Grant, United States attorney, for plaintiff; J. R. Beckwith for the defendant; when the following-named jurors were called and sworn to well and truly try the issue joined herein, to wit:

1 Jas. McWhann.	7 Jas. Cooper.
2 A. F. Hickman.	8 J. F. Denechaud.
3 F. Varenholt.	9 Chas. Dowden.
4 L. P. Alfred.	10 E. M. Levy.
5 W. S. Clayton.	11 E. M. Fox.
6 W. S. Fassman.	12 M. Duncan.

6 When Jas. McWhann was appointed foreman of the said jury
After hearing pleadings and evidence, the court ordered the same to go over until to-morrow, at 11 a. m.

Answer, filed Dec. 19, '89.

THE UNITED STATES, *vs.* HERMANN ISAACS. } No. 11857.

And now comes the said defendant, by J. R. Beckwith, his attorney, and for answer denies all and singular the allegations in said plaintiff's petition set forth and contained, and further saith that he has taken all steps necessary in law to defend against said demand; that he protested in due form against the decision of the collector of the port of New Orleans imposing said alleged duty, and appealed therefrom to the Secretary of the Treasury, and that said appeal was disallowed. Wherefore said defendant prays judgment against the demand of said plaintiff, with costs.

(Signed) J. R. BECKWITH.

Statement of facts, filed Dec'r 20, '89.

THE UNITED STATES, *vs.* HERMANN ISAACS. } No. 11857.

7 On the joint consent of plaintiff and defendant this cause was transferred to the circuit court of the United States for said district before trial and trial was had in said circuit court. And on the trial of said cause before the court and jury the United States attorney, on behalf of the plaintiff, and the undersigned counsel for defendant on behalf of said defendant, agreed that there was no dispute as to and concerning the following facts, and that the same stand and be taken by both parties as agreed facts not disputed in this cause.

1st. That Hermann Isaacs, the defendant, imported into the United States from a foreign port or place, by the steamship Paris, the goods named and described in the impost entry made by the defendant at the custom-house at the port of New Orleans, as shown by a copy the consular invoice of said entry with the endorsements thereon, made a part of this statement, and that said merchandise was subject to same rate of customs duty on importations for consumption.

2d. That in making said entry the defendant entered the goods as manufactured of paper classified in "Schedule M" in the act of Congress approved March 3, 1863, chapter 121 of the laws of 1883, as manufacturers of paper "not specially enumerated," and as therefore subject to a duty of only fifteen per cent ad valorem, and paid the estimated duty estimated at that rate and for that classification; and the goods were thereupon delivered to him and went into commerce for consumption in this country.

8 3d. That afterwards, in liquidating said entry and estimating the amount of duty to be paid on said importation, the customs authorities at New Orleans changed the classification of said merchandise from "Schedule M" of said act of 1883 to "Schedule N" of said act, and to the clause of said "Schedule N" providing for duty on "pipe bowls" and all smokers' articles not specially enumerated or provided for in this act at the rate of 70 per cent ad valorem, and thereupon liquidated said entry at the said rate of 70 per cent ad valorem and demanded the balance of duties from the defendant. That the difference between

the amount paid by defendant at the rate of fifteen per cent duty and the duty as liquidated at 70 per cent is correctly stated in the petition herein, and, if the lawful rate of duty is 70 per cent, is the amount due from the defendant to the United States.

4th. That the defendant was notified of the new classification and liquidation at the rate of 70 per cent ad valorem and protested against the same, as shown by his protest endorsed on said entry, and that he appealed to the Secretary of the Treasury, and that his appeal was disallowed before the trial of this cause.

5th. That the goods in question consisted of paper of a quality suitable for wrapping cigarettes filled with tobacco, and was cut into sizes fit for that use, and could have been used for that purpose, or in manufacturing cigarettes, but is not usually and in the ordinary course of trade put
9 on the market for sale to smokers in the condition and form in which it was imported; but such paper is fitted for market and sale to smokers by being separated into lots or parcels of from one hundred to two hundred and fifty leaves of paper, after which one edge of the parcel of leaves is connected together with paste, glue, or some other adhesive cement, and afterwards cemented to a protective cover, making, when the manipulation is complete, what is known in commerce as "cigarette books," and from which the leaves are torn one at a time for the manufacture of cigarettes by smokers or manufacturers. That the sample annexed hereto marked "A" shows the condition of the merchandise at the time of importation, entry, and classification; and the sample "B" hereto annexed shows the completed cigarette book as sold on the market for consumption. It was, however, possible for any smoker to have taken the separate leaves of paper in form as imported and used the same in making cigarettes without having been first made up in books as above described. In fact, a part of this shipment and importation was sold directly to manufactures of cigarettes in bulk for use in cigarette factory; and if the classification or rate of duty to be imposed is or can be in any manner affected by the intention of the importer as to future use after importation, the defendant admits that at the time of importation and entry it was his intention to use said paper in the manufacture of cigarette books of the description of Exhibit B hereto annexed, and that, in fact, a large portion of said paper was so used by him after importation, and was by him sold in that form in the United States.

6th. That the only material contention of law and fact between
10 the plaintiff and defendant in this cause is as follows:

The plaintiff contends that the goods and merchandise as imported and entered were or was, at the time of importation, in form as imported "smokers' articles" not specially enumerated or provided for in any portion of said act of Congress approved March 3, 1883, and that if said paper is deemed to be a manufacture of paper, it is also a smoker's article subject to the proper duty; and that, therefore, the liquidation of duty at 70 per cent ad valorem was the correct and lawful liquidation and imposition of customs or import duty.

The defendant on the other hand contended and contends—

1st. That the goods as imported in condition as imported were not smokers' articles and could not commercially become smokers' articles without a further act of manufacture or manipulation after the delivery of the goods to the importer.

2d. That if in form and condition as imported the goods in question are or were "smokers' articles," then the classification under "Schedule N" was wrong and the goods were not subject to duty at the rate of 70 per cent, because being manufacture of paper the proper classification was under that provision of Schedule M of said act of 1883 which provides for "Paper, manufactures of, or of which paper is a component material" with only fifteen per centum duty.

That it is only as to and concerning the issues and contention set
11 forth in this sixth subdivision of this statement that the parties to this cause are unable to agree and require the intervention of the court or jury.

Dec. 21, 1889.

(Signed.) WM. GRANT,
U. S. Att'y.
J. R. BECKWITH,
Att'y for Defdt.

12 [Act of March 3, 1883.] Cat. No. 587.

Oath of owner in cases where merchandise has been actually purchased.

I, H. Isaac, do solemnly and truly swear that the entry now delivered by me to the collector of contains a just and true account of the goods, wares, and merchandise imported by or consigned to me, in the Fr. S. S. Paris, whereof Artur is master, from Antwerp; that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise, including all cost of finishing said goods, wares, and merchandise to their present condition, and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know or believe in the existence of any invoice or bill of lading other than those now produced by me, and that they are in the state in which I actually received them. And I further solemnly and truly swear that I have not in the said entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purports to have been made, and that if at any time hereafter I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this district.

HERMANN ISAAC.

Port of New Orleans. Sworn to this 5th day of March, 1886, before me.

THOS. C. ANDERSON,
Spl. Dy. Collector.

[G. W. Rueff, custom-house broker, No. 7 Clinton street, N. O.]

Form 80.
Customs Reg. 1874.

Entry for immediate consumption.

Fees:
Permit 20
Bond..... 40
60
40
— $1.00

Entry for consumption of merchandise, imported by Hermann Isaac, on the Fr. S. S. Paris, Artur, master, from Antwerp, on the 2nd day of June, 1885, port of New Orleans, 2d June, 1885.

Marks.	Nos.	Description of goods.	Quantity.			70%.	70%.	25%.
~~HH~~	1182-3	Two cases cigarette paper	Owtl.	353.60				$139—70%=$97.30
			39.39		$139	$139		1,951—15%=292.65
								8—25%= 2.00
								2,098 391.95
HI	4142-5	Four cases man'f. paper		2,033.10			2,033.10	
	4146-9	Four " " "		2,664.20			2,664.20	June 3, '85
	4150-5	Six " " "		3,684.90			3,684.90	
	4156-7	Two " " "		1,730.40			1,730.40	
	4158-9	Two " " "	200 Ki.	40				40
				10,752.60	$1,959		10,112.60	
					$2,098		$1,951	
					$2,090 @ 70%=$1,463.00			(Signed)
					8 " 25% 2.00			pp. HERRMANN ISAAC
					2,098		1,465.00	GEO. WM. RUEFF.
					Paid		391.95	
					Deficit		1,073.05	

New Orleans, 24th July, 1885. I hereby protest against the liquidation of this entry assessing duty at the rate of 70% ad valorem on HI 4142-57, sixteen cases manufacture of paper cut to special sizes in leaves three inches in length and one and a half inch in width. I claim that the paper is provided for in Schedule M, under the provision for paper, manufactures of, not specially enumerated, or provided for at fifteen (15 %) per centum ad valorem.

pp. H. ISAAC,
GEO. WM. RUEFF.

Passed N. O.
July 16, '90.
J. W. E.
Sig. July 14, '85.
E. V. H.

14 *Oath of consignee, importer, or agent.*

I, Geo. Wm. Rueff, do solemnly and truly swear (or affirm) that the invoice and bill of lading now presented by me to the collector of the port of New Orleans are the true and only invoice and bill of lading by me received, of goods, wares, and merchandise imported in the whereof Artur is master, from Antwerp, for account of any person whomsoever, for whom I am authorized to enter the same; that the same invoice and bill of lading are in the state in which they were actually received by me, and that I do not know nor believe in the existence of any other invoice or bill of lading of the said goods, wares, and merchandise; that the entry now delivered to the collector contains a just and true account of the said goods, wares, and merchandise, according to the said invoice and bill of lading; that nothing has been on my part, nor, to my knowledge, on the part of any other person, concealed or suppressed, whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration therein are in all respects true, and were made by the person by whom the same purports to have been made, and that if, at any time hereafter, I discover any error in the said invoice or in the account now rendered of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this port. And I do further solemnly and truly swear (or affirm) that, to the best of my knowledge and belief, Hermann Isaac, of New Orleans, the owner of the goods, wares, and merchandise mentioned in the annexed entry; that the invoice now produced by me exhibits the actual cost, or fair market value at the time or times and place or places when or where procured, of the said goods, wares, and merchandise, including all cost for finishing said goods, wares, and merchandise to their present condition, and no other or different discount, bounty, or drawback but such as has been actually allowed on the same.

GEO. WM. RUEFF.

Sworn to this 2d day of June, 1885, before me,

J. D. CRAWFORD,
Deputy Collector.

Oath of owner, in cases where merchandise has been actually purchased.

I, do solemnly and truly swear (or affirm) that the entry now delivered by me to the collector of the port of New Orleans contains a just and true account of the goods, wares, and merchandise imported by or consigned to me in the whereof is master, from , (except what is now being entered for); that the invoice which I now produce contains a just and faithful account of the actual cost of the said goods, wares, and merchandise, including all cost for finishing said goods, wares, and merchandise to their present condition, and no other discount, drawback, or bounty but such as has been actually allowed on the same; that I do not know or believe in the existence of any invoice or bill of lading other than those produced by me, and that they are in the state in which I actually received them. And I further solemnly and truly swear (or affirm) that I have not in the said

entry or invoice concealed or suppressed anything whereby the United States may be defrauded of any part of the duty lawfully due on the said goods, wares, and merchandise; that the said invoice and the declaration thereon are in all respects true, and were made by the person by whom the same purports to have been made, and that if, at any time hereafter, I discover any error in the said invoice or in the account now produced of the said goods, wares, and merchandise, or receive any other invoice of the same, I will immediately make the same known to the collector of this port.

Sworn to this day of, 189 , before me,

, *Deputy Collector.*

(Across the page in black ink:) O. K.

(Across the page in black ink:) 1182-3
4145
46
50
56
58

(Across the page in black ink:) U. S. circuit court. 11-57. Filed Dec. 19, '89. H. J. Carter, d'y clerk.

(Across the page in red ink:) Bond 583.

(Indorsed:) 2075. Impost. Hermann Isaac. June 2nd, 1885. Vessel, French S. S. Paris, , master. From Antwerp. Date, June 2, 1885. Duty paid, $391.95. Ascertained duty, $1,465.00. Deficit, $1,073.05. Paid June 3rd, 1885. Sig. July 14, '85. W. H. Permit issued. Passed N. Off. July 16, '90. F. W. G. W. Rueff, custom-house broker, No. 7 Clinton street.

15 [Duplicate.]

U. S. Consular Agency, Cognac (France).

Je, soussigné, déclare que je suis propriétaire des denrées, produits et merchandises désignés dans la facture maintenant produite et ci-annexée que ladite facture est vraie et loyale à tous égards; qu'elle contient un compte plein et fidèle du véritable prix-courant desdits produits, denrées et merchandises au temps et au lieu où les mêmes ont été acquis ou fabriqués; que ladite facture ne contient que les escomptes, primes et décomptes réellement alloués, et qu'aucune autre facture desdits produits, denrées et marchandises n'a été et ne sera fournie à qui que ce soit. Je déclare, en outre, que lesdites marchandises sont en destination du port de La Nouv.-Orléans, aux Etats-Unis d'Amérique.

P. Pon de L. Lacroix, Fils.

[Translation.]

I, the undersigned, declare that I am the proprietor of the goods, products, and merchandize designated in the invoice now produced and hereto annexed; that the said invoice is true and loyal in all respects; that it contains a complete and faithful account of the price current of said product, goods, and merchandise at the time and place where the same were

bought or made; that the said invoice contain only the discount premiums and deductions really allowed, and that no other invoice of said product, goods, and merchandise has been nor will be furnished to any one.

I further declare that the said merchandise is destined to the port of New Orleans, in the United States of America.

(Signed) P. PON DE L. LACROIX, FILS.

16 [G. W. Rueff, custom-house broker, New Orleans, La.]

No. 232.—Mousseline & pelures sans colle pour copies de lettres. Usines, Angoulême, Charente, Mazères, Cassaignac. 4 machines à papier. Spécialité de papiers à cigarettes.

[Custom-house, New Orleans, June 3, 1885. Appraiser's office.]

L. LACROIX, FILS,
Angoulême le 26 *avril* 1885.

La New Orleans.

Monsieur Hermann Isaac doit les marchandises suivant's s'élevant à fr. 10,337.60 *payable dans Angoulême.*

L'avis de traite et la traite ne constituent aucune dérogation à la condition expresse de paiement dans Angoulême.

NOTA.—Je n'expédie pas de tableaux calendriers séparément des ordres. Il faut demander au moins 5,000 cahier de riz—là pour obtenir.

							15%
HI	4142 4145	251	paquets de papier cigarette découpé		.....	8.10	2,033.10
	4146 4149	346	do	do	do	..... 7.70	2,664.20
	4150 4155	519	do	do	do	..... 7.10	3,684.90
	4156 4157	168	do	do	do	..... 10.30 1	1,730.40 25.
	4158 4159	200	k^{g} papier demballage pailes		.....	20. "	40.
							10,152.60
	Emballage 14 caisses 160f. do 2 " 25				.....		185. "
							10,337.60

(Signed) L. LACROIX, FILS.
CHODANLEAU.

(Across the page in red ink:) 2244. Sig. July 14, 1885. Pfudmffin, July 16, 1885. O. B. 3. Cigarette paper leaves. Smokers' articles, 38%, 70%, 476. Wrapping paper, 25%, 392. Cases and packages not dutiable.

17 (Indorsed:) G. C. N. Ten thousand one hundred and fifty-two, 60 fcs., 193. 15. 25%. S. S. Paris. June 2, '85. Custom-house, New Orleans, this 3 June, '85. 4145, 4146, 4150, 4156, 4158. J. D. C. Signed, J. D. Crawford, Dy. Coll'r.

HI. 4145–4146–4150–4156. T. G. T. Four cases.

" 4158. One crate paper as noted.

Signed, L. J. Louer, appraiser. Correct, T. G. T. June 4th, '85. Hermann Isaac, Paris, Bordeaux, June 3, '85.

18 [Translation.]

Muslin and tissue without glue for copying letters. Factory. 4 paper mills. Specialty in paper for cigarettes.

L. LACROIX, SON,
Angoulême, April 26, 1885.

Mr. Hermann Isaac, dr., the following merchandise, amounting to 10,337.60 *fr., payable in Angoulême.*

Advise of draft and the draft does not constitute any derogation of the condition expressed in the payment in Angoulême.

H-I	4142/4144.	251 packages cigarette paper, cut			8.10..	2,033 10
	4145/4149.	246	do	do	7.70..	2,664.20
	4150/4155.	519	do	do	7.10..	3,684.90
	4156/4157.	168	do	do	10.50 .	1,730.40
	4158/4159.	200 k'o wrapping paper (straw)			20.00..	40.00
						10,152.60
Packing 14 cases, 160 f.						185.00
" 2 " 25						
						10,337.60

19 I do hereby certify that the within invoice numbered 232, in which are mentioned and described certain goods and merchandise amounting with the charges thereon to the gross sum of 70,337.60 frs. was produced to me by the subscriber of the foregoing, who thereupon declared that it was intended to make entry of said goods, wares, and merchandise at the port above named. I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be; and that, so far as I have the means of knowing, the statements made in the said declaration are true.

Witness my hand and the consular seal this 28th day of April, 1885.

[SEAL.] (Signed) WM. COATES,
U. S. Vice-Consul.

20 *Hearing and verdict.*

[Extract from the minute-book, November term, 1889.]

NEW ORLEANS, *Saturday, December* 21, 1889.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

UNITED STATES
vs.
HERMANN ISAACS. } No. 11857.

This cause as continued from yesterday, December 20. 1889, was this day resumed, and the counsel for the respective parties as well as the jurors empanneled in the cause being all present the trial was proceeded with on the statement of facts agreed to and signed by the respective parties by their counsel and filed of record. After receiving a charge from

the court the said jury did then and there, in open court through their foreman, render and deliver the following verdict:

We, the jury, find a verdict for the defendant, Hermann Isaacs, and against the demand of the plaintiff.

JAMES MCWHAN, *Foreman.*

New Orleans, Dec. 21, '89.

Whereupon it was ordered that the said verdict be recorded, and it is done accordingly.

21 *Rule for new trial, entered and filed Dec.* 26, 1889.

UNITED STATES
vs.
HERMAN ISAACS. } No. 11857, U. S. circuit court, eastern district of La.

On motion of Wm. Grant, U. S. attorney, and suggesting that the instructions of the court in this case and the verdict of the jury rendered thereon are erroneous and contrary to the law and the evidence,

It is ordered that the defendant show cause on Saturday, Dec. 28, 1889, why a new trial should not be granted the plaintiffs.

Marshal's return.

Received by U. S. marshal, New Orleans, La., Dec'r 26, '89, and on the same day I served a true copy of the within rule for new trial on J. R. Beckwith by leaving the same at his office, hands of Mr. Fisher.

(Signed) J. B. DONNALLY, *U. S. M'l,*
By J. B. DONNALLY, JR.,
Dy. U. S. M'l.

Ret'd Dec. 26, '89.

Order.—New trial refused.

[Extract from the minute-book, November term, 1889.]

22 NEW ORLEANS, *Saturday, January* 4, 1890.

Court met pursuant to adjournment.

Present: Hon. Edward C. Billings, district judge.

UNITED STATES
vs.
HERMANN ISAACS. } No. 11857.

This cause came on to be heard on the motion of the plaintiff for a new trial herein, and was submitted; on consideration whereof, it is ordered that the said motion for a new trial be denied and that the verdict and judgment herein remain undisturbed.

Bill of exceptions—Filed Dec'r 21, '89.

UNITED STATES
vs.
HERMAN ISAACS. } No. 11857.

I.

Be it remembered that at the trial of this cause, this 21 day of December, 1889, both the plaintiffs and the defendant offered in evidence before the jury the agreed statements of facts hereto annexed and made a part hereof, marked "Exhibit A," in support of the averments of the petition and answer. And there being no further or other evidence adduced and submitted to the jury, the case was submitted to the jury, and argued upon said agreed statement of facts.

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Whereupon, and before the jury had retired, the plaintiffs' attorney moved and requested the court to charge said jury to find a verdict in favor of the United States upon the facts stated in said "Exhibit A" for the full amount sued for herein.

But the court refused to give the charge so requested, and in lieu thereof instructed the jury that according to the facts agreed upon in this case by the parties herein as matter of law the paper imported was not used or sold in trade and in commerce without further process, namely, without that of being connected together by the addition of glue and attached by glue to covers, and was not to be classified under the head of smokers' articles, but was to be classified under the head of articles manufactured out of paper, and that defendant having paid the duty according to the last-mentioned classification, they should find a verdict for the defendant.

To which refusal to charge as requested, and the giving of said charge in lieu thereof, plaintiffs then and there excepted.

II.

Thereupon plaintiffs' attorney further requested the court to charge the jury upon said agreed statement of facts that the paper in question was a smoker's article, upon which a duty of seventy per cent ad valorem was properly assessed, and that plaintiffs are entitled to a verdict for the amount claimed. But the court refused to give this charge because by the 5th subdivision of the statement of facts the court found the paper should be classified as a manufacture of paper.

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To which refusal to give the charge as requested, and the ruling of the court, plaintiff then and there excepted.

III.

Thereupon plaintiff's attorney further requested the court to charge the jury upon the undisputed facts on which the case had been submitted and argued; that the cigarette paper imported by the defendant, even if a manufacture of paper, is also a smoker's article, and is therefore liable to pay the higher duty assessed, and that plaintiffs are entitled to recover the amount sued for.

But the court refused to give this charge, because as a conclusion of law from the facts admitted in the 5th subdivision of said statement of facts, the paper was to be classified as a manufacture of paper.

To which refusal to charge as requested, and the ruling thereon, plaintiff then and there excepted.

IV.

Thereupon plaintiff's attorney further requested the court to charge the jury upon said agreed statement of facts that the paper in dispute having been cut in sizes suitable for the use of smokers, and had been imported in that form with this motive and intent, that the pieces should be used by smokers in the making of cigarettes, the character and classification of the goods are not changed by being put up in packages containing a certain number of leaves each, no matter in what form secured for convenience in selling the same to the consumer or smoker. The paper is still a smoker's article, and as such chargable with a duty of 70 per cent ad valorem, and the plaintiff is entitled to a verdict.

But the court refused to give this charge as requested, for the reason that the facts, as found, do not show that said paper is known in trade and commerce as a smoker's article.

To which refusal to charge as requested, and the ruling of the court plaintiff then and there excepted.

V.

Thereupon plaintiff's attorney requested the court to charge the jury upon the admitted facts of the case, that the putting of a certain number of said leaves cut in sizes suitable for the use of smokers into books before selling the same to consumers is not a new manufacture, but simply a mode of packing cigarette paper in a convenient form to be sold and handled, and that said paper as imported was a smoker's article and remained such whether sold with or without covers, and the plaintiff is entitled to a verdict for the full amount claimed.

But the court refused to give this charge, because the conclusion of law under the 5th subdivision of the statement of facts is otherwise.

To which refusal and ruling the plaintiff then and there excepted, and tendered this bill of exceptions to said several instructions given and refused, and the rulings of the court thereon, and prayed the court to sign and seal the same, which is now here done accordingly, at New Orleans, this 21st day of December, 1889.

(Signed) EDWARD C. BILLINGS, *Judge.*

O. K. J. R. B.

26 *Judgment.*

[Extract from the judgment book, November term, 1889.]

NEW ORLEANS, *Saturday, Dec.* 21, 1889.

Court met pursuant to adjournment.
Present, Hon. Edward C. Billings, district judge.

UNITED STATES
vs.
HERMANN ISAACS. } No. 11857.

By reason of the verdict of the jury herein and in accordance therewith, it is ordered, adjudged, and decreed that there be judgment in favor of the defendant, Hermann Isaacs, and against the demand of the plaintiff, the United States.

Judgment rendered December 21, 1889.
Judgment signed January 7, 1890.
(Signed) EDWARD C. BILLINGS, *Judge.*

Motion and order for writ of error entered and filed Feby. 10, 1890.

UNITED STATES
vs.
HERMAN ISAACS. } No. 11857.

27 On motion of Wm. Grant, U. S. Atty. and on suggesting to the court that the United States, plaintiffs, are aggrieved by the judgment herein rendered against them on the 21st December, 1889, and are advised that there is error therein to their prejudice, and desire a writ of error therefrom, to operate as a supersedeas, returnable to the next term of the Supreme Court of the United States; it is ordered, that a writ of error be allowed as prayed for returnable to the next October term of the Supreme Court of the United States.

Order to return Exhibits A & B with writ of error, &c., entered and filed Feb'y 10, 1890.

UNITED STATES,
vs.
HERMAN ISAACS. } No. 11857.

On motion of Wm. Grant, U. S. att'y, and on suggesting to the court that a writ of error from the judgment herein, has been allowed to the plaintiffs returnable to the next term of the Supreme Court of the United States; and on submitting to the court that it is necessary and proper that the originals of plaintiffs' Exhibit A & B, which were used in evidence on the trial should accompany the transcript on the return of the said writ, for inspection by the said Supreme Court on the trial; it is ordered that the clerk identify and attach said exhibits to the transcript of the record returned with the said writ of error.

28 United States of America, circuit court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Edward R. Hunt, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 27 pages contain and form a full, complete, true and perfect transcript of the record and proceedings had, together with all the evidence and two original exhibits marked A & B hereto attached adduced on the trial of the case of United States, plaintiffs in error, vs. Herman Isaacs, defendant in error, No. 11857 of the docket of the said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 21st day of July, A. D. 1890.

[SEAL.] E. R. HUNT, *Clerk.*

I, Edward C. Billings, United States judge for the eastern district of Louisiana, do certify that Edward R. Hunt whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 21st day of July, A. D. 1890.

EDWARD C. BILLINGS, *Judge.*

29 UNITED STATES OF AMERICA, ss.

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, New Orleans division, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between the United States and Hermann Isaacs, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears:

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Melville W. Fuller, Chief Justice of the said Supreme Court of the United States, this 11 day of February, in the year of our Lord one thousand eight hundred and ninety.

E. R. HUNT,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

30 (Indorsed:) United States circuit court. No. 11857. United States versus Hermann Isaacs. Writ of error. No. , U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Feb'y 11, 1890. E. R. Hunt, clerk.

31 The United States of America. Circuit court of the United States, eastern district of Louisiana.

The President of the United States to Herman Isaacs, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein the United States of America are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said United States, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 14 day of February, in the year of our Lord one thousand eight hundred and ninety.

EDWARD C. BILLINGS, *Judge.*

32 (Indorsed:) United States circuit court, eastern district of Louisiana. No. 11857. The United States, plaintiff in error, vs. Herman Isaacs, defendant in error. Citation. No. ———. U. S. circuit court, eastern district of Louisiana, New Orleans division. Filed Feb'y 14, 1890. E. R. Hunt, clerk.

Marshal's return.

Received by U. S. marshal, New Orleans, La., Feb'y 14, '90, & on the 14th day of February, 1890, I served a true copy of the within citation in error on Herman Isaacs, defendant in error, through J. R. Beckwith, attorney of record for said defendant, by handing the same to him in person in the city of New Orleans and leaving the same in his hands.

J. B. DONNALLY,
U. S. Marshal,
By J. B. DONNALLY, Jr.,
D'y U. S. Marshal.

STATE OF LOUISIANA, *ss:*

Jno. B. Donnally, jr., being duly sworn, deposes and says that he is a lawful deputy United States marshal for the eastern district of Louisiana, and that the foregoing service was made by him, and is correctly set forth in the above return.

JNO. B. DONNALLY, Jr.

Sworn and subscribed to before me this 14 day Feb'y, 1890.
[SEAL.] E. R. HUNT, *Clerk.*

(Indorsement on cover:) No. 391. The United States, plaintiff in error, vs. Hermann Isaacs. 14099. E. Louisiana. C. C. U. S. Filed August 7, 1890.

148 U S 654

Office Supreme Court U. S.
FILED.
FEB 21 1893
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, PLAINTIFF IN error,
vs.
HERMANN ISAAC. } No. 391.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, PLAINTIFF IN error,
vs.
HERMANN ISAAC. } No. 391.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR THE UNITED STATES.

PRELIMINARY MEMORANDA.

This case will, the court permitting, be submitted in connection with *Hermann Isaac* v. *Jonas, Collector*, No. 142; while No. 141, *Isaac* v. *The United States*, is dismissed on motion of counsel for plaintiff in error.

As this case (No. 391) involves substantially the same legal proposition as does No. 142, although the related circumstances differ, counsel for the Government begs

leave to refer to the brief filed in No. 142 so far as the same shall be found applicable, without a repetition of the contents thereof.

STATEMENT.

The record in No. 391 shows that the defendant in error, Hermann Isaac, imported by the steamship *Paris*, from Antwerp, June 2, 1885, certain cases of cigarette paper and entered the same for consumption at the port of New Orleans. (Bill of Particulars, p. 7.)

The petition initiating this suit states the importation of 16 cases, valued at $1,951, the duties upon which, as assessed (at 70 per cent ad valorem), amounted $1,365.70.

The importer paid a duty of (15 per cent ad valorem) $292.65, leaving a balance of $1,073.05, to recover which this suit was brought by the United States.

If the importation is decided to be smokers' articles, under Schedule N of the tariff act of 1883 (22 Stat., 513), then the duty of 70 per cent ad valorem is proper, and the amount claimed above is the balance due from the importer; if the importation be held to be manufactures of paper, under Schedule M of said act, then the duty of 15 per cent ad valorem is proper, and nothing remains due from the importer. (Statement of facts, third, pp. 4 and 5.)

The respective paragraphs are these :

Pipes, pipe bowls, and all smokers' articles whatsoever, not specially enumerated or provided for in this act, seventy per centum ad valorem; all common pipes of clay, thirty-five per centum ad valorem.

Paper, manufactures of, or of which paper is a component material, not specially enumerated or provided for in this act, fifteen per centum ad valorem.

Did the merchandise imported consist of smokers' articles, or should it have been classified as manufactures of paper?

Suit to recover the $1,073.05 was begun June 15, 1886, in the United States district court and was transferred by agreement to the circuit court (p. 3) where the issue was tried before Judge Billings and a jury, in December 1889, (pp. 3–12).

The case was presented upon the trial by a written statement of facts (4, 5, 6), and the court charged the jury, and the jury thereupon, in open court, returned a verdict "for the defendant, Herman Isaac, and against the demand of the plaintiff," (p. 12). A motion for a new trial was submitted and denied (*id.*).

Judgment was rendered in accordance with the verdict (p. 15).

The bill of exceptions, setting forth formally the requests to charge, the instructions given to the jury, the refusals to charge, and the exceptions, appears on pages 13 and 14.

ASSIGNMENT OF ERRORS.

(1) The court erred in refusing to charge the jury, as requested (p. 13), "to find a verdict in favor of the United States, upon the facts stated in said Exhibit A, for the full amount sued for."

(2) And erred in instructing the jury as follows (p. 13, fol. 23):

> That according to the facts agreed upon in this case by the parties herein as matter of law the paper

> imported was not used or sold in trade and in commerce without further process, namely, without that of being connected together by the addition of glue and attached by glue to covers, and was not to be classified under the head of smokers' articles, but was to be classified under the head of articles manufactured out of paper, and that, defendant having paid the duty according to the last-mentioned classification, they should find a verdict for the defendant.

(3) The court erred in refusing to charge, as requested, upon the agreed statement of facts, "that the paper in question was a smoker's article, upon which a duty of 70 per cent ad valorem was properly assessed, and that plaintiffs are entitled to a verdict for the amount claimed."

(4) The court erred in holding that, "under the fifth subdivision of the statement of facts, the paper should be classified as a manufacture of paper" (fol. 24).

(5) The court erred in not holding, as requested, that the cigarette paper imported, "even if a manufacture of paper, is also a smoker's article, and is therefore liable to pay the higher duty assessed, and that plaintiffs are entitled to recover the amount sued for" (p. 13, foot).

(6) And the court erred in holding, as a conclusion of law, that the cigarette paper was to be classified as a manufacture of paper (p. 14, top).

(7) The court erred in not charging the jury, as requested, under sub. IV (p. 14), upon the agreed statement of facts—

> That the paper in dispute having been cut in sizes suitable for the use of smokers, and had been imported in that form with this motive and intent, that the pieces should be used by smokers in the making

of cigarettes, the character and classification of the goods are not changed by being put in packages containing a certain number of leaves each, no matter in what form secured for convenience in selling the same to the consumer or smoker. The paper is still a smoker's article, and as such chargeable with a duty of 70 per cent ad valorem, and the plaintiff is entitled to a verdict.

(8). The court erred in refusing to charge the jury, as requested, upon the admitted facts of the case—

> That the putting of a certain number of said leaves cut in sizes suitable for the use of smokers into books before selling the same to consumers is not a new manufacture, but simply a mode of packing cigarette paper in a convenient form to be sold and handled, and that said paper as imported was a smokers' article and remained such whether sold with or without covers, and the plaintiff is entitled to a verdict for the full amount claimed.

SUBMISSION.

It will be noted that in the case at bar the importation consisted wholly of cigarette papers and included no independent pasteboard covers. (Petition, p. 1; statement, p. 4; bill of particulars, p. 7.)

The merchandise came from L. Lacroix, fils, Angoulême, France (pp. 10, 11).

The facts of the case are set forth in the "statement of facts," fifth sub., p. 5.

Said subdivision (italics mine) is as follows:

> Fifth. That the goods in question consisted of paper of a quality suitable for wrapping cigarettes filled with tobacco, *and was cut into sizes fit for that*

use, and could have been used for that purpose, or in manufacturing cigarettes, but *is not usually* and in the ordinary course of trade put on the market for sale to smokers in the condition and form in which it was imported; but such paper is fitted for market and sale to smokers by being *separated* into lots or parcels of from one hundred to two hundred and fifty leaves of paper, *after which one edge of the parcel of leaves is connected together with paste,* glue, or some other adhesive cement, and afterwards cemented to *a protective cover,* making, when the manipulation is complete, what is known in commerce as "cigarette books," and *from which the leaves are torn one at a time* for the manufacture of cigarettes by smokers or manufacturers. That the sample annexed hereto marked "A" shows the condition of the merchandise at the time of importation, entry, and classification and the sample "B" hereto annexed shows the completed cigarette book as sold on the market for consumption. *It was, however, possible for any smoker to have taken the separate leaves of paper in form as imported and used the same in making cigarettes without having been first made up in books* as above described. In fact, a part of this shipment and importation was sold directly to manufacturers of cigarettes in bulk for use in cigarette factory; and if the classification or rate of duty to be imposed is or can be in any manner affected by the intention of the importer as to future use after importation, the defendant admits that at the time of importation and entry it was his intention to use said paper in the manufacture of cigarette books of the description of Exhibit B hereto annexed, and that, in fact, a large portion of said paper was so used by him after importation, and was by him sold in that form in the United States.

The contention involved in this case is agreed upon, defined, and set forth in subdivision 6 of said statement (pp. 6, 7,) and counsel begs leave to make reference thereto.

Counsel begs permission to refer to the argument contained in his brief filed in case No. 142 (*Isaac* v. *Jonas*) for an elaboration of the grounds urged on behalf of the United States in this case.

It is respectfully submitted that the judgment should be reversed in case No. 391.

A. X. PARKER,
Assistant Attorney-General.

FILED
MAR 6 1893
JAMES H. McKENNEY
CLERK

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1892.

THE UNITED STATES,
Plaintiff in Error,

vs.

HERMANN ISAACS,
Defendant in Error.

No. 391.

IN ERROR TO THE UNITED STATES CIRCUIT COURT FOR THE EASTERN DISTRICT OF LOUISIANA.

BRIEF FOR DEFENDANT IN ERROR.

CHARLES CURIE,
D. IVES MACKIE,
Attorneys for Defendant in Error.

W. WICKHAM SMITH,
Counsel.

C. G. Burgoyne, Walker and Centre Streets, N. Y.

United States Supreme Court.

THE UNITED STATES,
Plaintiff in Error,

vs.

HERMANN ISAACS,
Defendant in Error.

This is an appeal by the United States on a writ of error from a judgment of the U. S. Circuit Court for the Eastern District of Louisiana, in favor of the defendant in error, entered upon the verdict of a jury in an action by the United States to recover a balance of duties claimed to be due it from the defendant in error.

STATEMENT.

On June 2d, 1885, the defendant in error imported into the United States, per steamship "Paris," a quantity of cigarette paper (Record, p. 7). It was entered for consumption at the port of New Orleans, and a duty of 15 per cent. *ad valorem* upon it was paid on entry as "paper, manufactures of, or of which paper is a component material, not specially enumerated or provided for," under paragraph 388, Schedule "M," Act of March 3d, 1883 (22 U. S. Stat. at Large, p. 510) (fol. 7). Subsequently, the Collector at New Orleans, in liquidating the entry, decided that the paper was dutiable at 70 per cent. *ad valorem* under the provision in paragraph 476, Schedule "N," of the Act of 1883, for

"pipes, pipe-bowls and all smokers' articles whatsoever not specially enumerated or provided for" (fol. 8). Against this decision the defendant in error duly protested, and appealed to the Secretary of the Treasury, who affirmed the decision of the Collector (fol. 8). The Collector demanded additional duties, amounting to $1,073.05, from the defendant in error, which the latter refused to pay, and thereupon this suit was brought to recover it (fol. 8).

The case was tried upon an agreed statement of facts, which appears in the record (fols. 7–11). In addition to the facts above recited, this document shows the facts as to the nature, condition and use of the merchandise imported to be as follows (fols. 8 & 9).

"That the goods in question consisted of paper of a quality suitable for wrapping cigarettes filled with tobacco, and was cut into sizes fit for that use, and could have been used for that purpose, or in manufacturing cigarettes, *but is not usually and in the ordinary course of trade put on the market for sale to smokers in the condition and form in which it was imported;* but such paper is fitted for market and sale to smokers by being separated into lots or parcels of from one hundred to two hundred and fifty leaves of paper, after which one edge of the parcel of leaves is connected together with paste, glue, or some other adhesive cement, and afterwards cemented to a protective cover, making when the manipulation is complete, what is known in commerce as 'cigarette books,' and from which the leaves are torn one at a time for the manufacture of cigarettes by smokers or manufacturers. That the sample annexed hereto, marked 'A,' shows the condition of the merchandise at the time of importation, entry and classification; and the sample 'B,' hereto annexed, shows the completed cigarette book as sold on the market for consumption. It was, however, possible for any smoker to have taken the separate leaves of paper in form as

imported, and used the same in making cigarettes without having been first made up in books, as above described. In fact, a part of this shipment and importation was sold directly to manufacturers of cigarettes in bulk for use in a cigarette factory, and if the classification or rate of duty to be imposed is, or can be, in any manner affected by the intention of the importer as to future use after importation, the defendant admits that at the time of importation and entry it was his intention to use said paper in the manufacture of cigarette books of the description of Exhibit B, hereto annexed, and that, in fact, a large portion of said paper was so used by him after importation, and was by him sold in that form in the United States."

Upon the facts as thus admitted, the Court directed a verdict for the defendant. It is this direction of a verdict and the Court's refusal to direct a verdict for the plaintiff, which are assigned for error here by the Government.

POINTS.

I.

The paper, as imported, was not upon the agreed facts a completed smokers' article, and had not been advanced by manufacture to the condition in which it would be recognized in trade and commerce as a smokers' article, and it was not, therefore, dutiable as a smokers' article.

By the 5th subdivision of the statement of facts it was agreed :

" That the goods in question consisted of paper of a quality suitable for wrapping cigarettes filled with tobacco and was cut into sizes fit for that use, and could

have been used for that purpose, or in manufacturing cigarettes, *but is not usually and in the ordinary course of trade put on the market for sale to smokers in the condition and form in which it was imported.*"

The terms used by Congress in the Tariff Act are to be given the meaning which they have " in the ordinary course of trade " as applicable to articles " fitted for market and sale."

200 Chests of Tea, 9 Wheat, 430.
Elliott vs. Swartwout, 10 Pet., 137.
Arthur vs. Morrison, 96 U. S., 108.
Salomon vs. Robertson, 130 U. S., 412.
American Net and Twine Co. vs. Worthington, 141 U. S., 168.

Neither parts of articles of merchandise, nor materials for the manufacture thereof are, in the absence of express language to that effect in the statute, dutiable under provisions for the completed articles.

Robertson vs. Gerdau, 132 U. S., 454.
U. S. vs. Schoverling, 13 Supr. Ct. Rep., 24.

A hypothetical, conjectural, possible, occasional or unusual use of an article cannot control its classification for dutiable purposes.

Hartranft vs. Langfeld, 125 U. S., 128.

In considering the proper classification of an imported article, its dutiable character is to be determined by its condition as imported, and not with reference to the condition to which it may be advanced by subsequent manipulation or manufacture, or to the uses to which the importer may design to apply it, or to which it could be, or may in fact be adapted by subsequent manipulation.

Worthington vs. Robbins, 139 U. S., 337.
Dwight vs. Merritt, 140 U. S., 213.

The fact that paper has been cut in sizes suitable for the use of smokers, and has been imported in that form

with intent that the pieces shall be used by smokers in the manufacture of cigarettes, does not constitute such paper a smokers' article as claimed by plaintiff in error in its 4th request to charge (fols. 24, 25), when it is not in trade sold to smokers, and is not in practice used by smokers in the condition in which it was imported.

The pasting of these leaves together and to a cover is not a "mode of packing," as suggested in plaintiff in error's 5th request. If making cigarette books is a "mode of packing" cigarette paper, it would logically follow that as cost of packing was made non-dutiable by Section 7 of the Tariff Act of March 3d, 1883 (Oberteuffer vs. Robertson, 116 U. S., 499), the covers of a completed cigarette book would have been non-dutiable as a covering or putting-up charge. In other words, if we imported the covers and packages of cigarette paper separately, each would have been dutiable, but if we combined them, and manufactured a completed cigarette book which we imported, the Government would have been entitled only to duty on the paper. This is the logical result of the claim that making a cigarette book is only a mode of packing cigarette paper, and the result is so absurd as to demonstrate the fallacy of the proposition.

II.

The judgment should be affirmed with costs.

Dated New York, March 6th, 1893.

CHARLES CURIE,
D. IVES MACKIE,
Attorneys for Defendant in Error.

W. WICKHAM SMITH,
Counsel.